*THE HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P.No.22188 of 2007

% 07-12-2007

N. Hanumantha Rao

.... PETITIONER

Vs.

$ The Commissioner, Endowments Department,
Government of A.P., at Hyderabad and seven others

.....RESPONDENTS

<GIST:

>HEAD NOTE:

! Counsel for the petitioner : Sri P.Venugopal

^ Counsel for respondents : Government Pleader for Endowments.

?CASES REFERRED :

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No.22118 of 2007

Date 07-12-2007

Between:
N. Hanumantha Rao

..... PETITIONER

AND

Commissioner, Endowments Department,
Government of A.P., at Hyderabad and seven others

.....RESPONDENTS

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.22118 of 2007

ORDER:

Heard Sri P.Venugopal, learned counsel representing the writ petitioner, the learned Government Pleader for Endowments appearing for respondents 1 to 3 and Sri M.Vidya Sagar, learned counsel appearing on behalf of respondents 4 to 8.

2. This Writ Petition is filed questioning the action of the third respondent in issuing the impugned proceedings dated 04-10-2007 constituting the Trust Board for the Hanuman Temple, Laxminagar, Picket, Secunderabad, without considering the application of the petitioner for the trusteeship of the temple.

3. It is averred in the affidavit filed in support of this writ petition that the father of the petitioner late Sri N. Venkataswamy constructed Lord Hanuman Temple by incurring expenditure from his own funds in the land donated by one Sri Akula Narayana, that he had purchased the land admeasuring 388 square yards in plot No.6 in Survey No.26 for extension of the temple and, thus Lord Hanuman's temple came into existence at Laxminagar, Picket, Secunderabad. It is further averred that subsequently, the temple was included under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, 'the Act') and was registered as Section 6(c) temple with the Endowments Department. It is also averred that the father of the petitioner, being the founder, was the hereditary trustee of the temple till his demise in the year 1994 and was acting as a Chairman of the Trust Board. The second respondent declared him as the hereditary trustee, by order dated 03-09-1980, under Section 40 read with Section 77 of the Act. It is further averred that after the death of

his father, the petitioner was looking after the affairs of the temple and in spite of that, the Endowments Department had not constituted the Trust Board from 1994 till date. Thereafter, the petitioner and his family members had filed a petition before the third respondent to declare them as Hereditary Trustees of his father and to appoint him as the Chairman of the Trust Board of the temple. It is the case of the petitioner that even before filing of the said petition, on 30-06-1987, the father of the petitioner requested the third respondent to nominate his family members as hereditary trustees. It is further averred that on coming to know that the first respondent had issued notice dated 19-09-2007 to constitute the Trust Board, the petitioner and his family members filed a petition before the third respondent and that the third respondent, by proceedings dated 18-09-2007, rejected their request stating that after the demise of the father of the petitioner, no one was declared as his successor to the Temple as per the provisions of the Act 30 of 1987, even though his father had already declared him and other family members as his legal representatives vide letter dated 30-06-1987. The third respondent issued notice dated 13-09-2007 stating that the Trust Board would be constituted and invited applications for trusteeship in form No.II of the Rules under Section 17 (3) of the Act and that the petitioner and his family members filed applications for trusteeship in the prescribed form. It is also averred that the petitioner filed O.A. before the second respondent questioning the order of the third respondent dated 13-09-2007, along with an I.A seeking to direct the third respondent not to proceed with the constitution of the Trust Board. The said O.A. and the application are said to be pending. Petitioner states that the notice dated 13-09-2007 was erroneous since his father had already given letter on 30-06-1987 stating about his legal heirs and that it was not open to the third respondent to state that no one was declared as successor to his father under the Act. The petitioner had questioned the order of the third respondent dated 13-09-2007

by filing W.P.No. 21087 of 2007 and this Court, by order dated 5-10-2007, ordered notice and that the learned Government Pleader represented that no steps would be taken for constitution of the Trust Board, but even before the undertaking was given by the learned Government Pleader, the third respondent passed the impugned proceedings dated 04-10-2007 appointing the unofficial respondents herein as the Board of Trustees to the Temple. Subsequently, this Court disposed of the writ petition granting liberty to the petitioner to question the proceedings dated 04-10-2007. The petitioner, has, therefore filed the present writ petition questioning the proceedings dated 04-10-2007 stating that the Trust Board cannot be constituted without there being a hereditary member. In the circumstances, the writ petitioner approached this Court praying for appropriate relief specified supra.

4. In the counter affidavit filed by the third respondent-Assistant Commissioner of Endowments Department, it is stated that Sri Hanuman Temple at Laxmi Nagar, Picket, Secunderabad is a 6(c)(ii) institution under his administrative control and that there was abolition of Hereditary Trusteeships as per Section 16 of the Act 30/87 after the old Act 17/1966 was repealed and Act 30/87 came into force with effect from 28-05-1987. It is also stated that since hereditary rights were abolished as per Section 16 of the Act 30/87 with effect from 28-05-1987, the petitioner cannot claim that he is the son of Hereditary Trustee and he cannot get any such right. It is further stated that petitioner made application dated

10-09-2007 before the third respondent to declare him as the Hereditary Trustee and since the application itself was not maintainable as per the provisions of the Act 30/87, the question of appointing him as Chairman does not arise and he ought to have approached the competent authority for necessary declarations and he cannot claim any right for being appointed as Chairman of the Trust Board. It is also stated that since the deceased had failed to obtain declaration as Founder Trustee, as per Sections 15 & 87 of

the Act 30/87 and the rules made thereunder, during or after 1987 till his demise in 1994, the question of recognizing his son and others as trustees does not arise. It is further stated that in the absence of any order in favour of the petitioner, the third respondent cannot be found fault with for not appointing him as the trustee/Chairman and that the action of the third respondent in issuing notification for constitution of the Trust Board is as per the powers vested in him under Section 15(3) of the Act 30/87. Further, it is stated that the petitioner filed O.A. to declare him as Hereditary trustee and his sons and grandsons as founder members and since the petitioner's father was not recognized as Founder Family Member, the question of other members being recognized as such does not arise. It is also stated that since the Hereditary Rights were abolished in the year 1987 by introduction of the Act 30/87, there is no scope to declare the petitioner as Hereditary Trustee as on the date of application. Further, it is stated that the third respondent neither had knowledge of the O.A. said to have been filed by the petitioner before the second respondent for declaring him as hereditary trustee nor was there any direction by the second respondent not to proceed with the constitution of the Trust Board to the temple. It is also stated that proceedings have already issued constituting the Trust Board to the temple, under Section 15(3) of the Act 30/87, consisting of 5 members, vide office proceedings dated

13-09-2007. It is further stated that this Court, by order dated 11-10-1997, disposed of W.P.No.21087 of 2007 granting liberty to the petitioner to make appropriate application before the competent Deputy Commissioner Endowments, and let the concerned Deputy Commissioner, Endowments, decide the matter as per law. Further averments also had been made and dismissal of the writ petition had been prayed for.

5. Counter affidavit had been filed by respondents 4 to 8 wherein specific stand had been taken that the writ petition is not maintainable since there is an alternative remedy provided under the

Act. Further, it is stated that the petitioner's father had obtained a declaration under the Act 17/1966 in O.A.No.78 of 1977 as a hereditary trustee but the undisputed fact remains that consequent to the abolition of the hereditary trustee, neither the petitioner nor any of his family members had sought a declaration that they are members of the founder's family of the subject temple, that without even getting themselves declared as founder trustees after demise of his father in the year 1994, the petitioner and his family members are exercising the management on the subject temple illegally and are also collecting rents derived from the mulgies without there being any right in their favour as trustees to the subject temple. It is further stated that the subject institution was registered under the provisions of the Act and was classified as Section 6(c) temple. It is also stated that the petitioner's father had been declared as a hereditary trustee under the old Act but the petitioner had suppressed the fact that even after the abolition of the hereditary rights in the year 1985, the petitioner had not obtained any declaration as a member of the founder's family till date. It is further stated that though the petitioner agrees that his father passed away in the year 1994 and consequent to his demise, it is not known why he had kept silent for a period of 14 years and it has to be understood that he had preferred to keep quiet as he was permitted to illegally squat over the property of the temple and that mere non-constitution of the Trust Board cannot allow a perpetual succession to the petitioner without there being a declaration in his favour. It is further stated that the petitioner had filed an application on 13-09-2007 seeking a declaration that he is a member of the founder's family but the said application was filed only to prevent the constitution of the Trust Board. It is also stated that W.P.No.21087 of 2007 filed by the petitioner seeking to set aside the proceedings of the Assistant Commissioner of Endowments for constituting the Trust Board was disposed of holding that the petitioner is entitled to file an application before the Deputy Commissioner of Endowments

seeking a declaration that he is a member of the founder's family. The petitioner had filed the present writ petition seeking stay of operation of the order of the Assistant Commissioner of Endowments appointing as trustees to the subject institution. The Trust Board was constituted, vide proceedings of the Assistant Commissioner of Endowments, on 04-10-2007 and respondents 4 to 8 had been appointed as members of the Trust Board on 15-10-2007 and election to the post of Chairman was conducted and proceedings were also issued by the Assistant Commissioner of Endowments on
23-10-2007 and in view of the same, the relief as prayed for by the petitioner cannot be granted. Several facts and other details also had been narrated in paras 11 and 12 of the counter affidavit of respondents 4 to 8.

6. Petition praying for appropriate declaration to succeed late Sri N.Venkata Swamy for the Chairmanship of the Trust Board under Sections 87(1)(h), 17(1) & 20 of the Act is said to be pending before the Deputy Commissioner of Endowments, Hyderabad, and the same had been placed before this Court. In fact, this Court disposed of W.P.No.21087 of 2007, by order dated 11-10-2007, as hereunder:

> "In the affidavit filed in support of the implead application several facts had been narrated and it is stated that these respondents had been appointed as non-hereditary trustees by the proceedings of the Assistant Commissioner, third respondent, dated
> 04-10-2007 to Sri Hanuman Temple, Lakshmi Nagar. Several other facts had been narrated in the said affidavit.
>
> It is needless to say that the Assistant Commissioner, Endowments is not competent to decide this question relating to hereditary trustee of the founder family. It is needless to say that concerned Deputy Commissioner, Endowments, alone would be competent. The petitioner is at liberty to make appropriate application before the competent Deputy Commissioner Endowments and let the concerned Deputy Commissioner, Endowments, decide the said matter in accordance with law. It is also made clear the petitioner is at liberty to question the subsequent events if the petitioner is so advised."

7. In the light of the facts and circumstances since it is stated that appropriate petition had been moved before the concerned Deputy Commissioner of Endowments, Hyderabad, let the second respondent, who is the competent authority, decide the matter at the earliest point of time, in accordance with law, preferably within a period of four weeks from the date of receipt of a copy of this order. Except making this observation, no further positive direction can be granted.

8. With the above observations, the Writ Petition is disposed of. No order as to costs.

_____

07-12-2007

usd